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Chicago Fire Department

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February 28, 2011

Joseph M. Ferguson, Inspector General
Office of the Inspector General
180 North Michigan Avenue, Suite 2000
Chicago, Illinois 60601

Re: IGO Interim Program Report Regarding Overtime
Payments
to Exempt Employees of the Chicago Fire Department
Follow Up

Dear Mr. Ferguson:

We have reviewed the above-referenced interim report and your request to address actions the department has taken in response to each of your recommendations. We respect the work of the Inspector General's Office (IGO) and appreciate any constructive analysis that may improve the Chicago Fire Department's (CFD) delivery of services and use of public resources. In this document, we hope to answer your follow up questions.

Your follow up letter requested that the CFD address each of your "recommendations" made in your initial "report." Below you will find our answer to each of your "recommendations."

The CFD conduct a global audit and assessment of all 1.5 overtime and straight time overtime payments for 2008, 2009, and the first quarter of 2010.

The CFD has conducted a global audit. The statement is made, in the interim report that the mistaken payment of 1.5 overtime "likely would have stood uncorrected but for the IGO inquiry," is patently false. The payroll mistakes were discovered by CFD audit, prior to the IGO inquiry.

The CFD has two mechanisms to identify mistakes:

1. Post payroll entry audit
2. Budget tracking report after the payroll process is complete

The City's labor lawyers (or other appropriate staff) conduct a detailed analysis of which, if any, CFD exempt employees are entitled to receive 1.5 overtime as a matter of any applicable laws, including the FLSA.

When addressing the FLSA issue, the report summary reads that this is an issue that requires a “reasoned analysis” to determine applicability and, by extension, liability. The report then marginalizes this legal issue as a “partial justification.” As it applies to the facts of this interim report, the FLSA could be called a justification, or even a compelling justification, in light of the penalty for being wrong about FLSA application. The dismissal of this valid point and categorizing the CFD’s response and concerns as “less than compelling” is not in the spirit of cooperation and does nothing to help the CFD improve operations for the benefit of all Chicagoans.

Following a determination of which, if any, CFD exempt employees are entitled to receive 1.5 overtime as a matter of law, the IGO recommends the CFD conduct an analysis to ascertain what, if any, positions should be permitted as a matter of policy and the City's budget deficit to receive 1.5 overtime. The IGO recommends the practice of paying 1.5 overtime to all CFD exempts be ceased in its entirety.

The only group this applies to is IAD. The CFD is currently reviewing alternative methods for drug testing on duty members after hours.

In accordance with the City’s 2009 Amended Salary Resolution no civilian member of IAD has been granted OT since that date, only compensation time.

Uniform members of IAD still earn OT per the collective bargaining agreement.

The CFD undertake an analysis to evaluate whether any of the 1.5 overtime paid in 2008, 2009, and 2010 may and should be recouped by the City.

The IGO goes through great pains to belabor this point that seven (7) mistakes in overtime is “large-scale” and a “direct contravention,” while acknowledging evidence to the contrary with the City already being made whole.¹ This issue is a case of the IGO interim report making accusations and assumptions based on an admitted incomplete set of facts and ignoring steps taken to make the City whole due to a mistake.²

The CFD conduct an analysis to determine how the skyrocketing payment of straight overtime payments can be dramatically curtailed or altogether eliminated, while maintaining operationally-necessary staffing.

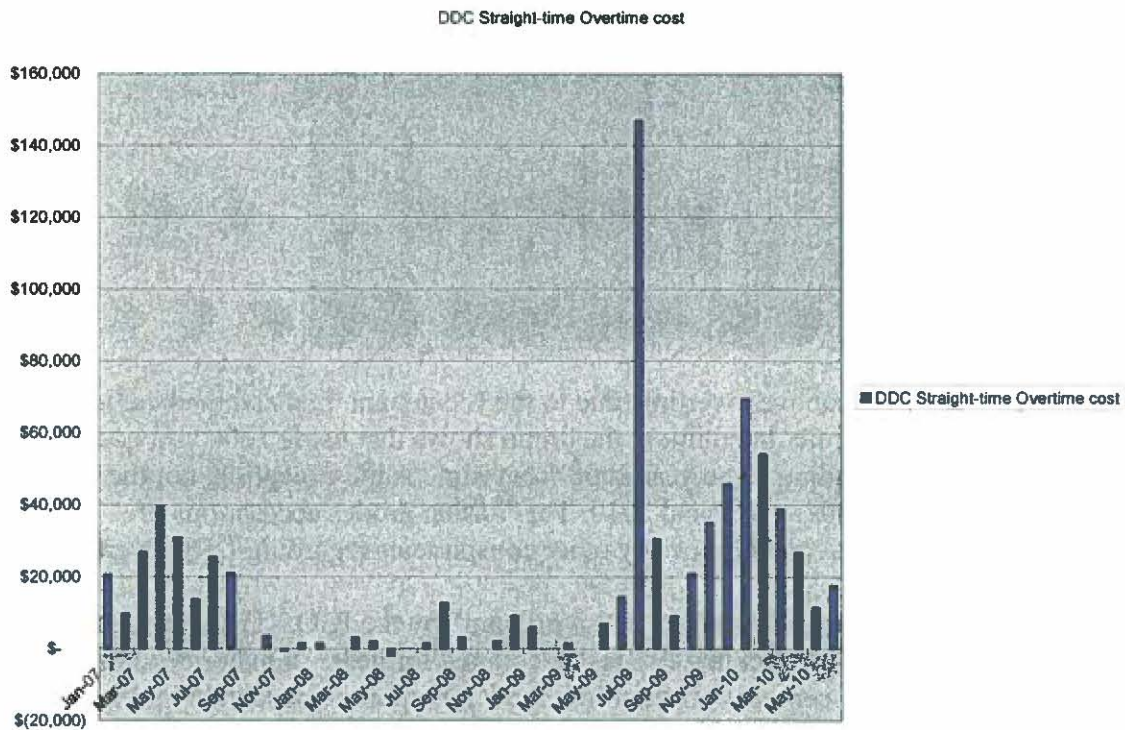
The IGO claims there is no standard for DDC overtime while listing all of the factors which have and continue to cause shortages to a vital command rank, operating on the street every day 24/7. To maintain a proper span of control, risk assessment, accountability, and incident command the CFD needs DDCs for each and every district on a daily basis to protect every person in every neighborhood in Chicago. The importance of span of control, risk assessment, accountability and incident command in the fire

¹ Ibid, p.12.

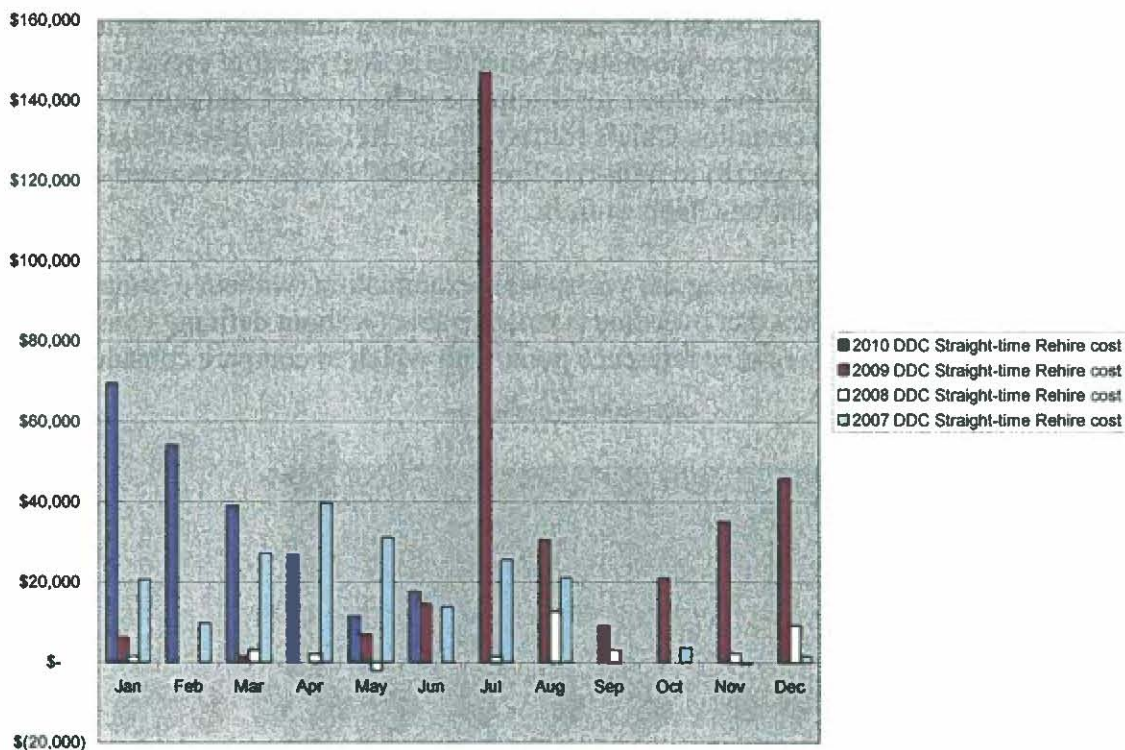
² Ibid, pp.8-9.

service is clearly delineated in many federal documents and guidelines.³ In addition, having an exempt rank member on the platoon schedule in every district every day provides unit/command cohesion, allows for discipline to be metered and initiated. Furthermore, with five (5) Battalion Chiefs (Safety, Plans, RIT, Still, Box) assigned to most significant fires and eight (8) to high-rise fires the DDC brings a command element to provide oversight of Battalion Chiefs at fires.

The interim report begins by stating the years under examination (without a sample with which to compare) and states that overtime is considerable (without defining considerable or providing a positive or negative reference point with which to compare considerable).



³ NFPA 1561, NFPA 1710, 29 CFR 1910.120, Homeland Security Presidential Directive (HSPD) 5, National Incident Management System (NIMS), Incident Command System (ICS), National Response Framework (NRF)



As shown in the graphs above, overtime due to the Lieutenant Test and medical leave had a drastic effect on overtime. In addition, the graph shows that using 2008 as a baseline for DDC overtime is misleading. The year 2008's overtime is the exception, not the rule, when compared with 2007, 2009, and 2010. This further erodes accusations of circumvention of cost saving days or any other conspiracies regarding DDC overtime.

The 2009 Lieutenant Test was labeled as "significant" by the IGO.⁴ This is an interesting word choice, in light of the fact that this test accounted for nearly a majority of the 2009 overtime (forty-six (46) percent). In addition, the IGO report is inaccurate in their reference to who sat for the test. The report reads that only Firefighters participated in the test.⁵ This is incorrect; the people holding the career service rank of Engineer are also eligible to take the test. The total number of members taking the test was nearly 1,900. To ensure the oral portion of the test was administered by a diverse group in a timely manner, twenty-one (21) DDCs were utilized, resulting in \$146,097 in overtime.

Ten (10) DDCs were on medical leave at some point in 2009 for a total of 1,159 days and 27,816 hours. At one point, six (6) DDCs (not five (5), as stated in the IGO interim report) were on medical leave at the same time. These lay up numbers also carried over into 2010, which started with six (6) DDCs on medical leave and can account for higher numbers at the beginning of the year.

The interim report further alludes to a rise in overtime coinciding with cost saving furlough days and alleges that overtime as a result of the 2009 Lieutenant Oral Boards

⁴ Ibid.

⁵ Ibid.

was “excessive.” The IGO accused the CFD of granting overtime to circumvent cost saving measures and rank abuse. These accusations are reckless, sensationalized options that contradict.

The IGO cites retirement, inability to promote, medical leave, complexities in scheduling, and the Lieutenant Test as reasons for overtime and states that due to all of these factors. How can the allegation be made that overtime coincided with cost saving days, yet acknowledge that the overtime was caused by a once-in-a-decade Lieutenant Test? Which accusation is true? Overtime incurred due to the Lieutenant Test and medical leave are mutually exclusive from cost saving furlough days. Unless overtime payments were being made directly resulting from cost saving furloughs and those payments were greater than the amount deducted from employees’ paychecks, it is intellectually dishonest to claim that “the City lost money.”⁶ The overtime from the Lieutenant Test and overtime as the result of medical leave would have occurred regardless of cost saving measures.

The CFD draft, clearly communicate, and disseminate written policies concerning eligibility for and payment of 1.5 and straight overtime to exempts. The IGO recommends the CFD develop detailed protocols and implement policy and procedure changes as appropriate, so as to maintain the CFD's operational manpower needs while substantially reducing the flow of overtime payments to the minimal amount operationally necessary.

In addressing the policy of the CFD, in terms of exempt overtime, the IGO points out, while ignoring past practice, that a written policy does not exist. In examining the policy of IAD, the IGO ignores that overtime is a direct result of drug testing required in the case of on-duty accidents and questions involving fitness for duty.

Furthermore, the interim report presents that there is “a lack of consistent policy concerning straight overtime and 1.5 overtime.” Yet, later in the interim report the IGO wrote, “All top level CFD personnel interviewed ... indicated that DDC’s are not permitted, as a matter of CFD policy, to receive 1.5 overtime,” and also reproduces the IAD policy for drug testing overtime.⁷ In addition, the claim is made that overtime moved at an accelerated pace; however, the pace was not established because the data sample was only for two years.⁸

The CFD evaluate the practice of paying CFD exempt employees holiday premium pay. In the view of the IGO, this practice should be discontinued.

The CFD has analyzed the holiday pay issue and determined that employees working a holiday should be compensated with holiday pay. This compensation for working

⁶ Ibid, p.6.

⁷ Inspector General’s Office Interim Report and Recommendations Regarding the Chicago Fire Department’s Payment of 1.5 Overtime and Straight Overtime to Exempt Employees, pp.1, 5, 10, July 2010.

⁸ Ibid, p.1.

twenty-four hours on a holiday, will be given to those working a holiday, at a straight time rate.

The IGO drastically overstated the amount of holiday pay given to DDCs scheduled on platoons where holidays fall. The CFD corrected this overstatement and the IGO corrected the record. Furthermore, the IGO claimed that the CFD provided no specifics in refuting IGO claims. The footnote regarding the IGO's holiday mistake is evidence to the contrary.⁹

The CFD evaluate payment of overtime for DDC participation in the Oral Boards and prospectively eliminate future payments by scheduling the Boards at a time when sufficient on-duty DDCs are available to participate.

As DDCs have only been used for Lieutenant testing this issue will be considered when the next Lieutenants test is being considered.

The CFD study the use of acting down (having DCs work shifts for DDCs) when there are insufficient DDCs on staff. The CFD further consider having DDCs cover two districts rather than one.

The CFD currently acts down District Chiefs across Bureaus to serve as DDCs in the Bureau of Operations. In addition, overages at the rank of Battalion Chief are used to act up to the rank of DDC.

Having DDCs cover two districts rather than one would decrease the CFDs ability to effectively manage resources and personnel. In addition, span of control would drastically increase from 5 to 1, to 10 to 1. Furthermore geography would limit the ability to conduct day to day responsibilities and responses while providing direct supervision. Finally, DDCs covering more than one District would result of no available DDCs, on days with multiple special events, days with one high rise fire and a Still and Box Alarm simultaneously.

OBM, in conjunction with the CFD, evaluate the applicability of furloughs to CFD exempts, given the surge of overtime since requiring CFD exempts to take mandatory furloughs.

Section "A" of the interim report primarily presents the history of the City's cost saving measures and provide context for the "analysis" performed by the IGO. There seems to be a misunderstanding of which employees the CFD requested an exemption from "City shutdown" days for and why the exemption was requested. The reason for the request was to either ensure vital equipment remained operational or to ensure available response staff for incidents.

⁹ Ibid, p.2. Inspector General's Office Interim Report and Recommendations Regarding the Chicago Fire Department's Payment of 1.5 Overtime and Straight Overtime to Exempt Employees, pp.7, 15, July 2010.

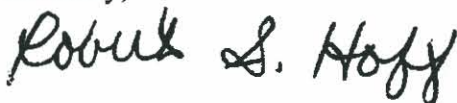
The personnel fulfilling those roles do so, on a rotating basis; therefore, the titles listed in the interim report are inaccurate.¹⁰ For example, on any given week there is coverage for IAD, 2-11 Alarm (and Below) Fires/Major Incidents, 3-11 Alarm (and Above) Fires/Large Scale Incidents, EMS, Media Affairs, Operation of the Fire Boats, Helicopter Operations, and 24/7 repairs to firefighter self-contained breathing apparatus (SCBA). One qualified person from the pool of titles will handle each of those responsibilities 24/7 for one week. If there is a "City shutdown," those functions still must be performed, but are performed by whomever is scheduled for that week; not all members in each possible title. Not all persons in each title were "excused from taking city shutdown days" as alleged, just the individuals scheduled that week with 24/7 responsibilities.¹¹

The comparison of cost saving deductions between years shows annual disparities.¹² Of course, there is a disparity in deductions between years:

1. The number of cost saving days increased.
2. Flaws and loopholes were discovered and closed.
3. Alternative coverage methods were explored.

In closing, at times, some of the language used in the interim report seemed inflammatory, maligning, and opinionated. Words such as dire, extravagance, skyrocketed, excessive, hemorrhaging, rank abuse, enormous, troubling, large-scale, and surge do not live up to the standard of an independent authority assisting agencies in improving efficiency and hope the use of such language was an oversight.¹³ We welcome any help and support to be better fiduciaries of public resources. In addition, the CFD welcomes any assistance that can be provided to improve operations. Furthermore, the CFD values and realizes the benefit of having a "fresh set of eyes" to point out problems. In the future we hope and welcome that the Office of the Inspector General to working with us in finding solutions to problems.

Sincerely,



Robert S. Hoff
Fire Commissioner

cc: Raymond Orozco, Chief of Staff
Eugene Munin, Budget Director
Steve Lux, Comptroller

¹⁰ Ibid. p.2-3.

¹¹ Ibid. p.3.

¹² Ibid.

¹³ Report and Recommendations of the Inspector General, pp.1-2, June 30, 2010. Inspector General's Office Interim Report and Recommendations Regarding the Chicago Fire Department's Payment of 1.5 Overtime and Straight Overtime to Exempt Employees, pp.1, 6, 8, 15, July 2010.